

1 really meet, is a survey available?

2 Q I have photographs.

3 A Okay.

4 Q Were there photographs taken of
5 this location of the wall?

6 A Yes.

7 Q Do you know who took them?

8 A David Geossl.

9 Q Were they taken on the day you were
10 present?

11 A Correct.

12 Q Are these pictures part of the
13 building department's file?

14 A I have a file in my office for
15 Lafayette, yes.

16 Q I will ask you to take a look at
17 those photographs?

18 A Okay.

19 Q Take a look at them and look over
20 them please?

21 A Okay.

22 Q Is there a date on those
23 photographs?

24 A 10/20/06.

25 Q Are they photographs that were

1 taken by you or a colleague of the building
2 department?

3 A It was taken by David Geossl

4 Q Are those photograph a fair and
5 accurate representation of the property as it
6 existed at the time of your inspection?

7 A Yes.

8 MRS. FIORE: At this time, I move to
9 offer the photographs into evidence as
10 People'S 1.

11 MRS. MULLINS: I object, first of
12 all, the individual who took the photos is
13 not here to testify apparently with regard
14 to them. Secondly, I thought that
15 Mr. Carpaneto said that the photos were
16 taken on the occasion of his first
17 inspection and these are dated October 20th
18 so, on that basis, I object to them as it's
19 not accurate as of when they were taken.

20 MRS. MULLINS: Sustained, you could
21 keep going.

22 Q Is the wall in question, depicted in
23 the photograph you are viewing?

24 A Yes.

25 Q The wall is comprised of two --

1 A The wall runs along the backyard
2 between 2 and 5 and runs along the side yard.

3 Q The wall that was sited and is the
4 subject of this violation is the rear portion of
5 the wall that abuts the 5 Huguenot and 2 Lafayette?

6 A Correct.

7 Q If you were observing the wall from
8 the yard of 5 Huguenot Drive, if you were looking
9 at the wall --

10 A Right.

11 Q Is the sidewall that is not in
12 disrepair to your left or to your right?

13 A When you go down the driveway, it's
14 to your left.

15 Q Is there any other portion of the
16 wall other than the two portions that meet
17 perpendicular?

18 A No, that is it.

19 Q What did you do as a result of your
20 observations?

21 A We, at this point, asked Anthony
22 Oliveri to come in and take a look at the wall. He
23 is the town consulting engineer and he works for
24 Dolph Rotfeld(ph).

25 Q What was the purpose of consulting

1 this other individual?

2 A Just to have another opinion on the
3 wall.

4 Q Do you know if Mr. Oliveri indeed
5 did go to inspect the wall at 5 Huguenot Drive?

6 A Yes, he did. I was present when he
7 went there.

8 Q Do you recall when that was?

9 A Not exactly.

10 Q Do you recall, approximately, how
11 long after your first visit to the property?

12 A Probably a week or so, maybe a
13 couple weeks.

14 MRS. MULLINS: Could we have
15 established for the record when that visit
16 was. I don't believe he testified to a date
17 at the wall?

18 MRS. FIORE: Which visit?

19 THE COURT: I don't really know when
20 the first visit is and I don't know when
21 the second visit is, so I would like to
22 know when both were.

23 MRS. FIORE: Okay. I thought you said
24 it.

25 A I could look in the records but I

1 don't have it with me now.

2 Q Do you have an approximate idea of
3 when you first --

4 A I may have it written down.

5 Q Do you have an idea now, as you
6 testify here?

7 A Probably.

8 Q Was it in the summer, fall?

9 A About a month ago.

10 THE COURT: When did you first go to
11 the property, about, give me a month?

12 A The end of September, I believe
13 October.

14 THE COURT: Okay.

15 Q 2006?

16 A Yes, 2006.

17 Q How many times before you called Mr.
18 Oliveri, did you visit the property?

19 A Once.

20 Q And the time that you visited the
21 property that you testified to already with your
22 colleague David, that is the first time you visited
23 the property?

24 A From the yard, yes, not actually
25 going on the property. You could see the wall from

1 the road, which I saw-- you know, also prior.

2 Q But you were on the property at 5
3 Huguenot Drive?

4 A Yes.

5 Q That was approximately September or
6 October of 2006?

7 A Yes, correct.

8 Q At that time, you retained the
9 services of a consulting engineer?

10 A Yes.

11 Q Who was that consulting engineer?

12 A Anthony Oliveri.

13 Q Did you have a conversation with
14 Mr. Oliveri regarding his findings of the wall?

15 A He supplied us with a report.

16 Q Did you have a conversation with
17 him prior to the report?

18 A I asked him to come out and look at
19 the wall.

20 Q Once he did that, did you talk to
21 him about it?

22 A Yes, and he felt that the wall --
23 MRS. MULLINS: Objection.

24 THE COURT: Sustained.

25 Q Don't tell me what was said, that

1 is not admissible, but did you discuss anything in
2 addition to the plan for 5 Huguenot Drive?

3 A No.

4 Q Did you receive a report from Mr.
5 Oliveri regarding his findings of the wall?

6 A Yes.

7 Q Did you have occasion to go back to
8 the property after Mr. Oliveri inspected the wall?

9 A No.

10 Q Did you receive any further
11 information from any other sources regarding 5
12 Huguenot Drive?

13 A No.

14 Q Did any of your colleagues visit 5
15 Huguenot Drive?

16 A Not to my knowledge.

17 Q At any point, did you issue a
18 summons for 5 Huguenot Drive?

19 A The summonses are right there, I'm
20 not sure of the date but yes.

21 Q A summons was issued; correct?

22 A Yes, the reason why it was issued
23 was because the people at 5 Huguenot had not
24 furnished a report yet from their engineer.

25 Q Did you have a discussion with the

1 home owners regarding 5 Huguenot Drive?

2 MRS. MULLINS: Which home owners?

3 MRS. FIORE: The home owners of 5

4 Huguenot Drive.

5 A No.

6 Q Did you issue any formal citation
7 from the building department concerning the
8 property at 5 Huguenot Drive?

9 A The summons.

10 Q And what was the nature of the
11 summons violation?

12 A Property maintenance code.

13 Q Could you describe what constitutes
14 the violations of the property maintenance code?

15 A Property maintenance code could be
16 violated if there is structures that are in need of
17 repair, structures that need upkeep as far as
18 maintenance, anything that could possibly be
19 dangerous.

20 Q What kind of structures are the
21 subject of the property maintenance code?

22 A Walls, buildings, stairs,
23 sidewalks, electrical, everything.

24 Q This structure was what kind of
25 structure?

1 A Retaining wall.

2 MRS. FIORE: I have no further
3 questions at this time.

4 THE COURT: Cross examination?

5 CROSS EXAMINATION BY MRS. MULLINS:

6 Q Mr. Carpaneto, you have no formal
7 training at all in engineering or architecture?

8 A That is correct.

9 Q Is it your testimony that the first
10 time that you inspected, personally, the site, the
11 wall in question, was sometime in either late
12 September or early October?

13 A Correct.

14 Q Somewhere around there?

15 A Yes.

16 Q So, is it true that did you not
17 visit the site at all prior to issuing the summons
18 or the notices of violation in this case?

19 A No, I saw the wall from the road,
20 you could see the wall from the road clearly.

21 Q Is it true that you did not inspect
22 the wall up close --

23 A That is true.

24 Q Prior to issuing the violations?

25 A Yes.

1 Q Is it also true that nobody from
2 your building department inspected the wall prior
3 to the issuance of the violations or the summons in
4 this case?

5 A As far as I know.

6 Q It is true that the violations and
7 the summons in this case were issued based on the
8 phone call that the building department received
9 from Mr. Greenwald?

10 MRS. FIORE: Objection.

11 THE COURT: Overruled.

12 A They were based on the phone call
13 plus the engineering report, which was in the file
14 from Detective Benedict Salanitro .

15 Q I think your testimony was,
16 Mr. Carpaneto, that the building department
17 received a call, by the way, do you know who in the
18 building department received that call?

19 MRS. FIORE: Objection, we have
20 three questions.

21 THE COURT: Sustained, give me one
22 question.

23 Q Who, on behalf of the building
24 department, received the call from the Greenwalds,
25 if you know the name?

1 A The secretary.

2 Q Do you know her name?

3 A I don't know which one took the
4 call.

5 Q As a result of that call, was some
6 sort of a memo or written message recorded by the
7 secretary?

8 A Probably a phone message to return
9 the call.

10 Q Did you receive a copy of that?

11 A I probably did, there is probably a
12 copy somewhere. I just don't get all the questions
13 about why the phone call came in. It's obvious that
14 the wall is there, it's been there for a long time.

15 THE COURT: She is entitled to
16 explore the various areas surrounding this
17 case and this is one line of questioning.

18 A Okay.

19 THE COURT: It can't go on forever
20 but she could start.

21 A Okay.

22 Q You testified that there is a file
23 that you maintain in your office?

24 A Right.

25 Q And is that file other than or

1 separate from the building file?
2

3 A That is a separate file but it has
4 the same information in it.

5 Q Exactly the same information?

6 A It should.

7 Q Do you have that file with you
8 today?

9 A No.

10 Q Is it in your office?

11 A Yes.

12 MRS. MULLINS: I call for a copy of
13 the file that Mr. Carpaneto has testified
14 about.

15 A I could go get it, it will take me
16 two minutes.

17 THE COURT: What exactly are we
18 asking for?

19 MRS. MULLINS: Apparently, there is a
20 file other than the building department
21 official file, which I have seen. I have
22 seen the building department's file but
23 apparently, there is another file that Mr.
24 Carpaneto has in his office that has some
25 information and he referred to it while he
was testifying on direct.

1 A It's just a file that I keep handy,
2 so I don't have to go back and forth to the
3 building file, that is it, I am more than happy to
4 get it.

5 MRS. FIORE: I will object. I think
6 Mr. Carpaneto has testified that it's
7 repetitive, it contains the same
8 information that is contained in the
9 building file, I object at this time.

10 THE COURT: Okay, for now we will not
11 stop the questioning to get the file. It
12 may turn out that if it becomes relevant
13 but right now it is not based upon the
14 witness's testimony right now.

15 MRS. MULLINS: Thank you.

16 THE COURT: Please continue.

17 Q Your testimony regarding your
18 visual inspection of the wall, was that it did not
19 look right; is that correct?

20 MRS. FIORE: Objection, which visual
21 inspection you are referring to? Are you
22 referring to the visual inspection from the
23 road or --

24 THE COURT: Overruled, sit down.

25 Q I'm referring to the inspection

1 where you wall up to

2 were with--

3 A Mr. Gossel.

4 Q Could you spell that for me?

5 A G-E-O-S-S-L.

6 Q That was the only inspection that
7 you made of the wall; is that right?

8 A At a distance, yes.

9 Q And your testimony was that the
10 wall, I believe you said, does not look right?

11 A That is correct.

12 Q Did you make any measurements of
13 the wall?

14 A Just observations.

15 Q Did you make any measurements?

16 A No, not with David.

17 Q I'm asking whether you did?

18 A No.

19 Q Personally?

20 A No.

21 Q Did you make any notes?

22 A No.

23 Q Did you take a pad along with you
24 that day?

25 A No, it's obvious.

1 Q With regard to the steel tie backs?

2 A Yes.

3 Q I think your testimony was that
4 they seem to be rusted?

5 A I said some of them are rusted, the
6 upper ones seem to be but not as bad.

7 Q Which ones seem to be rusted in the
8 stone portion --

9 A The stone portion mainly.

10 Q And there are tie backs in the
11 masonry portion of the wall as well; isn't that
12 right?

13 A Yes.

14 Q How many are in the masonry portion
15 OF the wall?

16 A About four or five.

17 MRS. MULLINS: Let the record
18 reflect that Mr. Carpaneto is looking at
19 the photographs.

20 A Yes.

21 Q What kind of condition are those
22 steel tie backs in?

23 A They appear to be not rusted.

24 Q Good condition?

25 A Fairly good.

1 Q From your observation and
2 inspection of the wall, does it seem to you that
3 those steel tie backs that are in the masonry
4 portion are performing the task that they are ment
5 to perform?

6 A No.

7 Q Why is that?

8 A The wall was cracking and moving,
9 the wall has moved.

10 Q When you say the wall is moving, do
11 you mean it is currently moving?

12 A It has moved.

13 Q Let me finish the question --

14 A Yes.

15 Q It has moved?

16 A Yes.

17 Q And based on your observations an
18 inspection, when did that occur, that movement?

19 A Over time.

20 Q Over what period of time?

21 MRS. FIORE: Objection.

22 THE COURT: Overruled, if you could
23 answer, could you?

24 A I don't know, just over time, a
25 period of time.

1 Q I think you testified that there
2 seems to be some gap, I guess, I don't know if you
3 used the word gap but between the stone portion and
4 the masonry portion?

5 A Where it's over; correct.

6 Q And I think you estimated --

7 A About four or five inches.

8 Q Did you measure that with a ruler?

9 A No.

10 Q And you also testified that there
11 was some-- I think you called it lifting?

12 A Yes.

13 Q At four to five degrees?

14 A Just an observations from the
15 property at 5.

16 Q From the property?

17 A At 5, I went on both properties.

18 Q In order to come to that
19 determination that there was some listing, what did
20 you do?

21 A Looked at it, just visually looked
22 at the wall, it's obvious.

23 Q During this time that we are
24 talking about, I think it began maybe in the late
25 spring or early summer through present--

1 A Whatever.

2 Q Did the building department have
3 occasion to go to 5 Huguenot Drive?

4 A I went October 20, 2006.

5 Q Is that the date now, October 20,
6 is that the date?

7 A That is when I took pictures, the
8 pictures were taken on that day.

9 Q When you are talking about that
10 inspection, it's not September, it is October 20th?

11 MRS. FIORE: Objection.

12 THE COURT: Let the witness answer.

13 Q I just want to be clear on the date
14 that you were at the property?

15 A October 20, 2006 for sure.

16 Q Thank you.

17 A I may have been there prior to that
18 too, by myself, I don't actually remember.

19 Q You testified before that you were
20 not there prior to issuing the summons --

21 A I had seen the wall from the road
22 and I'm not sure if I went there by myself and took
23 David the following time --

24 MRS. MULLINS: I understand that.

25 MRS. FIORE: Let him finish.

1 A I don't see why that is relevant.

2 THE COURT: It's my job to decide
3 what is relevant. It's your job to answer
4 the questions fully and truthfully.

5 A I am.

6 THE COURT: Now wait for the next
7 one.

8 Q I think my question was before that,
9 during the summer months, even the late spring, the
10 summer months, did the building department, not you
11 in particular, but did the building department, to
12 your knowledge, have occasion to go out and visit
13 the property at 5 Huguenot Drive?

14 A I did but not physically going on
15 to the property, I just drove down when I got the
16 call and took a look from Lafayette.

17 Q Are you aware that the Defendants
18 in this action had filed building permits to have
19 worked performed at 5 Huguenot Drive at this time
20 period?

21 A No.

22 Q Are you aware that Kevin Moore-- is
23 that your employee?

24 A Yes.

25 Q What is his position?

1 A Assistant building inspector.

2 Q Are you aware that Mr. Moore went
3 out to 5 Huguenot Drive during the summer months of
4 2006?

5 A For what?

6 MRS. FIORE: I object, Your Honor.

7 THE COURT: Overruled, could you
8 answer the question?

9 A No, was there a building permit that
10 was issued for something?

11 Q I'm just asking you if you-- there
12 were building permits that were issued for my
13 clients property, for the record.

14 A Did he go out and do an inspection?

15 Q I'm asking you if you were aware
16 that he went out to do an inspection?

17 A I don't keep track of every
18 inspection that comes into the office, no.

19 Q Isn't it true that Mr. Moore
20 informed you that the wall looked fine to him?

21 A No.

22 Q That is not true?

23 A Not true, Kevin actually told me
24 that two other home owners mentioned that the wall
25 is bad, somehow he had gotten that.

1 MRS. MULLINS: Move to strike.

2 MRS. FIORE: Objection, she opened
3 the door, Your Honor.

4 THE COURT: It's not stricken.

5 A That was the conversation.

6 Q You testified that you did, in
7 fact, have a conversation with Mr. Greenwald; is
8 that correct?

9 A Yes, Mr. Or Mrs.

10 Q You are not sure which one?

11 A I spoke with them both at some
12 point. I don't know which you are referring to.

13 Q On how many occasions, did you have
14 conversations with the Greenwalds?

15 A A couple of times.

16 Q Did they come and visit you in the
17 building department?

18 A She came in for some copies but I
19 never saw her there.

20 Q Did Mr. Greenwald come to the
21 building department?

22 A Not to my knowledge.

23 Q And the conversations that you had
24 with the Greenwalds, were they by telephone or in
25 person?

1 A I talked to Mrs. Greenwald at the
2 site the day we were there with David and prior to
3 that on the telephone.

4 Q Do you recall the date of the of
5 issuance of the first violation in this matter?

6 A No.

7 Q Your summons refers to an act that
8 first occurred or I guess it's an act of July of
9 2006?

10 A Yes.

11 Q Does that refresh your recollection
12 as to when you first issued a violation?

13 A That sounds normal. Normally, for a
14 violation we give people a certain amount of time
15 to correct the violation and if there is a second
16 violation, we give them more time and after that,
17 if nothing happens, we issue the summons, that is
18 the policy.

19 Q When you issued the first violation
20 and nothing happened, did you ever call the home
21 owners?

22 MRS. FIORE: Are we referring to the
23 Rotenbergs?

24 MRS. MULLINS: These home owners
25 right here, the Defendants.

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A No.

Q Did you contact anyone on their behalf, their attorneys?

A They were sent a registered letter I believe with the violations in it.

Q And then there was some passage of time; is that right?

A Yes.

Q And you issued a second violation; is that right?

A Normally, yes.

Q Did you in this case?

A I don't remember exactly but I may have not have done it personally but one of my staff may have. Is there a second violation there?

Q Yes. And during the passage of time from the issuance of the first violation and the second violation and up to the time that there was a summons issued in this case, did you ever have any conversations with home owner at all regarding the particulars of this violation?

A No.

Q Did you ever inform them in writing or otherwise as to what the basis of the department's violation was?

1 A I sent them a notice of violation.

2 Q My question is, other than what is
3 in the notice of violation, did you send them
4 anything in writing or have any conversation with
5 the home owners regarding the particulars of the
6 violation?

7 A No.

8 Q Did you ever issue anything in
9 writing or otherwise to the home owners or anyone
10 on their behalf, and I'm referring to the
11 Defendants, about what needed to be done to the
12 wall in order to have it not violate your code?

13 MRS. FIORE: Objection, again
14 referring beyond the notice of violation,
15 which has been testified to several times.

16 THE COURT: Overruled.

17 A Could I have the question again.

18 THE COURT: We will have the court
19 reporter read it back.

20 (Whereupon, the last question was
21 read back by the reporter.)

22 A No.

23 Q Lastly, Mr. Carpaneto, after you
24 retained the services of Anthony Oliveri and Dolph
25 Rotfeld engineering and received his report and had

1 discussions with him, at that time, did you give
2 any indication to the home owners, the Defendants
3 in this case, in writing or otherwise as to what
4 could be done to the wall so that it did not
5 violate the building code?

6 A No, but if they would have called
7 me, I certainly would have given them some
8 information?

9 Q Did you contact them though, that
10 is my question?

11 A No.

12 MRS. MULLINS: Nothing further.

13 THE COURT: Any Redirect?

14 MRS. FIORE: Yes.

15 REDIRECT EXAMINATION BY MRS. FIORE:

16 Q You said that you observed the wall
17 visually from the road; is that correct?

18 A Yes, prior to going actually on the
19 property, yes.

20 Q Could you describe what your
21 observations of the wall were at that time?

22 A You could see-- it's obvious that
23 you could see the wall is in the same condition
24 that it is in the closer photos, it just was a
25 closer look at it, you could see shifting,

1 cracking, it's not far from the road.

2 Q Okay. In this case, you said you
3 issued two violations; is that correct?

4 A Yes.

5 Q When a final notice of violation is
6 served, approximately, how long do you allow if
7 there has been --

8 A I believe ten days.

9 Q If there has been no correction or
10 improvement or resolution to the original problem?

11 A Right --

12 Q Approximately, how long do you wait
13 before you issue a summons?

14 A It depends, we try to keep it to
15 ten days but we are willing to work with anybody
16 who is willing to work with us, so we had not heard
17 from anybody at that time, so we issued a summons.
18 After the summons is when we got the engineering
19 report, so they had to be nudged a little bit.

20 Q Sorry, I did not hear that?

21 A They had to be nudged.

22 Q During the time from the initial
23 notice of violation to the time of the summons was
24 issued, you received no indication from the home
25 owners that they were working at attempting to fix